

ORIGINAL



Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress
Washington, D.C.

In the Matter of:

Determination of Rates and Terms for
Making and Distributing Phonorecords
(Phonorecords III)

Docket No. 16-CRB-0003-PR (2018-2022)

16-CRB-0003-PR

13 2017

Copyright Office

**AMAZON DIGITAL SERVICES LLC'S, GOOGLE INC.'S, SPOTIFY USA, INC.'S, AND
PANDORA MEDIA, INC.'S OBJECTIONS TO THE ADMISSIBILITY OF
GEORGE D. JOHNSON'S HEARING TESTIMONY AND PROPOSED EXHIBITS**

Pursuant to 37 C.F.R. § 351.10(a) and the Judges' directive of March 9, 2017,¹ Amazon Digital Services LLC, Google Inc., Spotify USA, Inc., and Pandora Media, Inc. (collectively, the "Services") hereby submit the following written objections to certain portions of the March 9, 2017 oral testimony of George D. Johnson (the "Oral Testimony") and certain exhibits sought to be admitted during the Oral Testimony.

The Services object to all of the statements in the Oral Testimony, except for the following, as lacking foundation, calling for speculation, comprising hearsay, incomplete, irrelevant, beyond the scope of Mr. Johnson's written testimony, unduly prejudicial, and unduly repetitious:

Page and Line	Statement
418:12-419:2	12 And, Mr. Johnson, will you begin by 13 stating your name, please, for the record? 14 THE WITNESS: Yes. George D. Johnson. 15 JUDGE BARNETT: And I'm going to ask you 16 to put that microphone down. 17 THE WITNESS: Actually, that's the

¹ See March 9, 2017 Hearing Tr. at 417:12-25, 418:1-11.

Page and Line	Statement
	<p>18 microphone right there -- I'm sorry. I got it.</p> <p>19 George D. Johnson.</p> <p>20 JUDGE BARNETT: Thank you. And how are</p> <p>21 you employed, Mr. Johnson?</p> <p>22 THE WITNESS: I am self-employed.</p> <p>23 JUDGE BARNETT: Okay. In what area?</p> <p>24 THE WITNESS: I am in real estate in West</p> <p>25 Virginia, but I'm still a songwriter. But I'm not a</p> <p>1 famous or successful songwriter, but I still write</p> <p>2 songs. But not for a living.</p>
420:14-21	<p>14 but I guess I have to, so anyway -- so, let's see.</p> <p>15 I want to start off with Exhibit 4084, please. So</p> <p>16 the question is why are we here? And there's a lot</p> <p>17 of reasons.</p> <p>18 I have an attorney in Nashville who has</p> <p>19 been my personal attorney, music attorney, Mr. James</p> <p>20 Harris, who is a great attorney. And one day he</p> <p>21 just sent this to me. And, of course, he is talking</p>
421:11-16	<p>11 And so it seems like sometimes that, you</p> <p>12 know, we're here just because we have to provide a</p> <p>13 minimum rate for the compulsory license. And to me</p> <p>14 free-market direct negotiations are always better,</p> <p>15 but since we're here, you know, we're trying to make</p> <p>16 the best of it. And from a songwriter's standpoint,</p>
422:22-24	<p>22 you about. So, of course, I have a cloud locker and</p> <p>23 more of a purchased content locker, most similar to,</p> <p>24 but being in Web IV, you know, you realize that</p>
423:25:424:4	<p>25 THE WITNESS: Well, it seems like all the</p> <p>1 rates that are proposed in this rate hearing and in</p> <p>2 Web IV, they all seem to start with, you know, .0025</p> <p>3 and they usually go up a penny. So I was just</p> <p>4 trying to follow that pattern. And when it comes to</p>
424:9-15	<p>9 my case. And so I was just trying to plug in</p> <p>10 numbers that were a little bit higher than the</p> <p>11 Copyright Owners' but also get into rates that I</p> <p>12 think are more reasonable, which is the .001, and I</p> <p>13 think they should go up over time, whether you</p> <p>14 factor in for inflation or, you know, just rate</p> <p>15 increases for songwriters.</p>
425:9-11; 14-17	<p>9 categories fit the licensees. And they don't really</p> <p>10 have anything to do with the songwriter or the</p> <p>11 copyrights, in my opinion.</p> <p>14 just -- you know, I understand some are</p> <p>15 subscriptions, some are non-subscription, but to me</p> <p>16 from a copyright standpoint and a songwriter</p> <p>17 standpoint, it's all the same.</p>

Page and Line	Statement
425:24-426:10	<p>24 companies or different services. It was 9.1 cents. 25 And even though it's still below market, and with 1 inflation it should be closer to 50 cents, I think 2 the same should hold true for the Subpart B 3 mechanical. And it should be something that we can 4 rely on, has value, and to me, you know, .0's or 5 anything is still too low, and I hate to even offer 6 the .0022, but I just, from experience and from what 7 I think may happen, you know, we're going to 8 probably just end up with .0015 or even less, you 9 know. And if we have -- if Apple has their, you 10 know, proposal, .00091, I mean, that's staggering</p>
429:12-15	<p>12 should be -- I mean Subpart B and C should be 13 abolished and done away with and simplified in a way 14 that the Copyright Owners have proposed and also 15 Apple has proposed. It's just the rate that is --</p>
430:3-13	<p>3 THE WITNESS: It's just a generic dollar. 4 So let's say, for example, if a song costs 2 5 dollars, right here you have 25 cents going to the 6 songwriter. The songwriter would get 50 cents. And 7 the music publisher would get 50 cents if it was 2 8 dollars. If it was 3 dollars, the music publisher 9 would get 75 cents and the songwriter 75 cents. And 10 in the 114 case, it would be the same. 11 In my opinion, the -- and according to 12 the RIAA data, a song is really worth historically 13 about 5 dollars.</p>
432:9-13	<p>9 would say that, yes, I would propose the Subpart B 10 -- and I did in my written direct statement, propose 11 those .0015 or .0022 rate, along -- on a per stream 12 basis, along with this bundle to pay for the cost of 13 copyright creation.</p>
442:2-6	<p>2 LP Fleetwood Mac "Rumor." I remember buying 3 "Peter Frampton Comes Alive," and I think it was at 4 least 25 bucks back then. And if you wanted that 5 one song, if you wanted "Make Me Feel Like You Do," 6 you had to buy the album. You know, you had to wait</p>
443:25-444:20	<p>25 JUDGE FEDER: Mr. Johnson, when -- when 1 did free streaming in your view take off as a -- as 2 a driver of this trend that you're pointing out? 3 THE WITNESS: Yeah, well, of course 4 Pandora has been around for about 15 years, but they 5 weren't as popular at the time. And I would say 6 around, you know, 2004, between 2004 and 2009. 7 JUDGE FEDER: But between -- just looking 8 at this chart, between 1999 and 2004 -- 9 THE WITNESS: Right. 10 JUDGE FEDER: -- seems to be the most 11 dramatic drop in the average price of a single.</p>

Page and Line	Statement
	<p>12 THE WITNESS: Yes.</p> <p>13 JUDGE FEDER: What happened between 1999</p> <p>14 and 2004 and what is your evidence to support that?</p> <p>15 THE WITNESS: I would say primarily</p> <p>16 Napster, the peer to peer, and the DMCA was just</p> <p>17 passed in 1998. So I would say that would be the</p> <p>18 main factor because you wouldn't have Napster or</p> <p>19 Pandora if it wasn't for the safe harbor positions</p> <p>20 in the DMCA.</p>
445:7-22	<p>7 JUDGE STRICKLER: So you don't know if</p> <p>8 the iTunes store, which was selling singles, began</p> <p>9 between 1999 and 2004. You just don't recall?</p> <p>10 THE WITNESS: I can't recall.</p> <p>11 JUDGE STRICKLER: Thank you.</p> <p>12 THE WITNESS: But I will say that -- what</p> <p>13 was I going to tell you? Yeah, I think the Napster</p> <p>14 was and the DMCA were the main thing, but as the</p> <p>15 streaming services gradually picked up from 2005,</p> <p>16 let's say, to 2010, then you had more and more, I</p> <p>17 think that helped keep the cost down -- I mean keep</p> <p>18 the rates depressed and lower, and then also when</p> <p>19 iTunes came into being, the decoupling of the album</p> <p>20 also helped. So I would say Napster, the DMCA, and</p> <p>21 the decoupling of the album, all within from like</p> <p>22 1999 to 2010, let's say.</p>
453:22-25	<p>22 for my demos. I've done demos of songs over 15</p> <p>23 years. I've done them four different times, you</p> <p>24 know, just because you want to -- you're pitching a</p> <p>25 different artist. You want to -- you think you can</p>
456:6-12	<p>6 Anyway, here is 4016. This is my iTunes</p> <p>7 page. And these are my albums, singles I put out</p> <p>8 since 2012. I did a direct deal back -- I think it</p> <p>9 was around 2011 or '12 and -- with Apple and I've</p> <p>10 never signed up for Apple Music. I've never put any</p> <p>11 of my songs on streaming, even though they're there,</p> <p>12 a couple songs are there.</p>
457:3-4	<p>3 And so this -- you know, this is a direct</p> <p>4 deal by me with Apple on their site. And to me,</p>
457:22-458:3	<p>22 This is my Google Play store. And I'm</p> <p>23 not on the Google Play interactive or streaming</p> <p>24 part. But these are my albums for sale. And this</p> <p>25 is a direct deal, even though it's not that hard to</p> <p>1 do with Google Play; you pay 25 dollars and they</p> <p>2 sign you up. But I've had this for at least five</p> <p>3 years or so.</p>
497:6-16	<p>6 limited pressing sound recording, there are three</p> <p>7 levels to the AFM, American Federation of Musicians;</p> <p>8 there is the demo level, there is the limited</p>

Page and Line	Statement
	<p>9 pressing, which this is, and then there is the 10 master recording. 11 And of course the money goes up for each 12 of the three tiers. And so even though I made a 13 master recording they're still, you know, glorified 14 demos. And the point is that if I would have gone 15 for the demo session here through the AFM, the money 16 would have been a little less for the players, but</p>
498:16-20	<p>16 rights era, and so I had just been through this. I 17 was the only person to leave BMI as a publisher 18 because of the limited withdrawals and Judge 19 Stanton's ruling, and so I just wanted to show you 20 that.</p>
520:21-522:6	<p>21 You have -- you said in the beginning of 22 your testimony or throughout, actually, that 23 songwriters and Copyright Owners haven't been 24 represented in these negotiations. And we have two 25 very large organizations that bill themselves as 1 representatives of the Copyright Owners, they are 2 publishers and songwriters associations. 3 So how do you reconcile those two 4 circumstances? 5 THE WITNESS: Right. Well, I say this, 6 with all due respect to the Copyright Owners, saying 7 that the Copyright Owners, even Bart Herbison or Mr. 8 Israelite is a copyright owner, is like saying I'm a 9 lawyer. You know, I never went to law school. I 10 never got a law degree. Mr. Herbison has never 11 written a song. Mr. Israelite has never written a 12 song. Counsel, I don't think, has written any 13 songs. 14 So it is a whole different -- when you 15 are a creator, it is a whole different thing. So I 16 could say that songwriters were represented in 17 Phonorecords I in 2008, but I just don't feel like 18 they were, and I don't feel like NSAI or NMPA, 19 really, represents me. I think they represent the 20 three major publishers, just like RIAA represents 21 the three major labels, the NMPA represents those 22 three major publishing companies, Sony/ATV, 23 Warner/Chappell and Universal Music Publishing. 24 And that is just kind of the way we all 25 look at it, every songwriter, artist, publisher I 1 know, that's the way we think. 2 JUDGE BARNETT: Is membership in these 3 organizations voluntary? 4 THE WITNESS: It is voluntary. And I 5 have been a member of NSAI. I just quit this year. 6 But it is voluntary. But I wrote in my written</p>
523:13-524:1	<p>3 And there are a group of great</p>

Page and Line	Statement
	<p>4 songwriters like Gary Nicholson and Steve Bogard and 5 Liz Rose who are active in NSAI and represent the 6 professional songwriters, but I just, to me, and I 7 say this with due respect, they just don't represent 8 me. 9 So when they were making those deals in 10 2001, that was a deal that Mr. Israelite, Mr. 11 Marchimare, and Dima from Google, representing the 12 Services, that's a deal that they made for 13 themselves, as far as Google. And to me RIAA and 14 NMPA were representing the three major labels and 15 their publishing subsidiary. And they have such 16 market weight, market power, the three majors in the 17 record side and publishing side that when they talk 18 about publishers, that's kind of what they mean are 19 those three. 20 And to me, as I said before, I am an 21 individual songwriter. I am an individual, I write 22 individual songs, have individual plays. And that's 23 what I am trying to represent is that. So I don't 24 think in Phonorecords I and II that individual 25 person, songwriters who are subject to the 1 compulsory license was represented.</p>

Additionally, the Services object to the following exhibits sought to be admitted during the Oral Testimony.

Exhibit	Basis for Objection
4001	Hearsay, Lack of Foundation
4002	Relevance, Hearsay, Incompleteness
4003	Hearsay, best evidence, Lack of Foundation
4004	Incompleteness, Lack of Foundation, Duplicative
4005	Hearsay, Relevance, Lack of Foundation, Illegible Copy
4007	Hearsay, Relevance, Lack of Foundation
4008	Relevance, Hearsay, Incompleteness, Lack of Foundation, Authenticity
4009	Hearsay, Lack of Foundation
4010	Hearsay, Incompleteness, Lack of Foundation
4011	Hearsay, Lack of Foundation
4012	Hearsay, Lack of Foundation

Exhibit	Basis for Objection
4013	Hearsay, Lack of Foundation
4014	Hearsay, Incompleteness, Lack of Foundation
4015	Hearsay, Incompleteness, Lack of Foundation
4018	Hearsay, Incompleteness, Duplicative, Lack of Foundation
4019	Relevance, Hearsay, Incompleteness, Lack of Foundation
4020	Relevance, Hearsay, Incompleteness, Lack of Foundation
4021	Hearsay, Lack of Foundation
4022	Hearsay, Lack of Foundation
4023	Hearsay, Lack of Foundation
4024	Hearsay, Incompleteness, Lack of Foundation, Privileged
4025	Hearsay
4026	Hearsay
4027	Hearsay
4028	Hearsay, Lack of Foundation
4029	Relevance, Hearsay, Lack of Foundation
4030	Relevance, Hearsay, Lack of Foundation
4031	Relevance, Hearsay, Lack of Foundation
4032	Relevance, Hearsay, Lack of Foundation
4033	Relevance, Hearsay, Lack of Foundation
4034	Relevance, Lack of Foundation
4035	Relevance, Hearsay, Incompleteness, Lack of Foundation
4036	Relevance, Hearsay, Incompleteness, Lack of Foundation
4037	Relevance, Hearsay, Incompleteness, Lack of Foundation
4038	Relevance, Hearsay, Incompleteness, Lack of Foundation
4039	Relevance, Hearsay, Incompleteness, Lack of Foundation
4040	Relevance, Hearsay, Incompleteness, Lack of Foundation
4041	Relevance, Hearsay, Incompleteness, Lack of Foundation

Exhibit	Basis for Objection
4042	Relevance, Hearsay, Incompleteness, Lack of Foundation
4043	Relevance, Hearsay, Incompleteness, Lack of Foundation
4044	Relevance, Hearsay, Incompleteness, Lack of Foundation
4045	Relevance, Hearsay, Incompleteness, Lack of Foundation
4046	Relevance, Hearsay, Incompleteness, Lack of Foundation
4047	Relevance, Hearsay, Incompleteness, Lack of Foundation
4048	Relevance, Hearsay, Incompleteness, Lack of Foundation
4049	Relevance, Hearsay, Incompleteness, Lack of Foundation
4050	Relevance, Hearsay, Incompleteness, Lack of Foundation
4051	Relevance, Hearsay, Incompleteness, Lack of Foundation
4052	Relevance, Hearsay, Incompleteness, Authenticity
4053	Relevance, Hearsay, Incompleteness, Lack of Foundation
4054	Relevance, Hearsay, Incompleteness
4055	Relevance
4057	Hearsay
4059	Incompleteness
4061	Relevance, Hearsay
4062	Hearsay, Incompleteness, Lack of Foundation
4063	Hearsay, Incompleteness, Lack of Foundation
4064	Hearsay, Incompleteness, Lack of Foundation
4065	Relevance, Hearsay, Incompleteness
4066	Relevance, Hearsay
4067	Relevance, Hearsay
4068	Relevance, Hearsay, Incompleteness, Lack of Foundation
4069	Relevance, Hearsay, Lack of Foundation, Illegible Copy
4070	Hearsay, Incompleteness, Lack of Foundation
4071	Relevance, Hearsay, Incompleteness, Lack of Foundation

Exhibit	Basis for Objection
4072	Relevance, Hearsay, Incompleteness, Lack of Foundation
4073	Relevance
4074	Hearsay, Lack of Foundation
4075	Hearsay, Incompleteness, Lack of Foundation
4076	Relevance, Hearsay
4077	Hearsay, Incompleteness, Lack of Foundation
4078	Hearsay, Incompleteness, Lack of Foundation
4079	Hearsay, Incompleteness, Lack of Foundation
4080	Relevance, Hearsay, Incompleteness, Lack of Foundation
4081	Incompleteness
4082	Incompleteness
4083	Relevance, Hearsay, Incompleteness
4084	Hearsay
4086	Hearsay

Dated: April 13, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2017 I caused a copy of the foregoing document to be served by email to the participants and counsel listed below:

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/s/ Meredith Santana

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April 12, 2017

BY HAND DELIVERY

United States Copyright Royalty Judges
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Re: Docket No. 16-CRB-0003-PR (2018-2022)
(Phonorecords III)

To the Copyright Royalty Judges:

On behalf of Spotify USA Inc. ("Spotify"), we write to request that the following citations to the final transcript of April 7, 2017 be converted from open session to closed session in light of the restricted matter discussed:

5559:4-10; 5560:14-15; 5569:11-5570:11; 5571:17-5572:2; 5577:15-24;
5578:14-5579:7; 5579:13-21; 5580:2-5581:1; 5587:4-5589:10; 5589:22-5590:3;
5593:5-12; 5594:11-20; 5597:13-16; 5598:8-17; 5654:5-18.

Spotify has conferred with the Copyright Owners, and they do not object to our request.

Very truly yours,

A handwritten signature in dark ink, appearing to read "P. Schmidt".

Peter O. Schmidt

cc: All Counsel of Record